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INFORMATION

FOR

JAMES HAY of *Caribber*,
And the Earl of MORTON,
for his Intereſt,

Againſt

Sir *William Bruce* of *Kinroſs.*

SIR *William*, having raiſed a groundleſs Proceſs of Reduction and Improbation, againſt *Caribber* as to his Rights of the Lands of *Aberdour*, and notwithſtanding that *Caribber* hath ſufficiently produced, and be ready to debate and venter all his Right, upon the iſſue thereof, Sir *William* ſtill inſiſting for a Certification *contra non producta*, *Caribber*, by his laſt Bill, repreſented to the Lords, 1*mo*. That he was ready, inſtantly to exclude Sir *William*'s Title, by a moſt relevant Alledgance, and to verify the ſame *inſtanter*. 2*do*. That ſeing Sir *William* did ſo much varie and alter the Titles whereon he inſiſted, there was no reaſon that he ſhould have a general Certification *contra non producta*, for it was manifeſt by the Proceſs, that Sir *William* did firſt give out with his Summons *Kirkneſs* Appryſing, which yet ſince he hath been obliged by a Decreet of the Lords, to denude himſelf of, in favours of *Caribber*; And for *Kennoways* Appryſings, which were then likewiſe given out *in initio proceſſus*, *Caribber* produces *prior* and preferable Appryſings; And it was

always ſuſtained to exclude a general Certification, that the Defender produced a more ancient and better Right, than any produced by the Purſuer: And whereas now Sir *William* produces *Clerk*'s Appryſing, to ſupport his Title. he hath produced the ſame, not *in initio proceſſus*, nor even while the Terms were running, but after Certification was craved. and *Caribber* is ready inſtantly to exclude the ſame. But by what is ſaid, it may appear how inſufficient and varying Sir *William*'s Titles are, and therefore can be no Ground for a General Certification *contra non producta*. And *3tio*, *Caribber* did repreſent, That the End and Uſe of Certifications was, to bring Productions to a ſtate, whereupon the Debate on the Reduction might proceed with certainty, either to aſſoilzie the Defender, or give the Purſuer the Victory in the Reduction; And therefore it hath been conſtantly obſerved, That where the Defender did either produce a more ancient Right, for excluding the Purſuers Title, and was ready to debate upon it; or where he proponed and verifyed a relevant Alledgeance for excluding the Purſuers Title, in both theſe Caſes the Production ought to be held ſatisfyed, and the Debate proceed, without admitting any General Certification *contra non producta*.

Theſe being the Grounds of *Caribber*'s laſt Petition, and the Lords by their Interloquitor, having remitted to the Ordinary, to hear the Parties, whether the Grounds were formerly proponed and repelled; It was alledged by the Purſuer, before the Lord *Aberurchil* Ordinary for the time, That the Defenders Alledgeance, that he had a relevant Exception to exclude the Purſuers Title, *viz* That the Appryſings he inſiſted on, was got out of the Earl of *Morton*'s Charter-Cheſt, where they were as retired Evidents, and ſo could not be a ſufficient Title in this Action, was formerly proponed before the Lord *Fountainhal*, and by him repelled, which did exactly meet the Terms of the Remitt.

To which it was Anſwered by the Defender, That this Alledgance was indeed formerly proponed before the Lord *Fountainhall*, but only Repelled, becauſe not inſtantly verified, by the Act, But now *Caribber* as is clear doth not only inſtantly verify the Alledgance by the Production of Sir *William*'s Receipt, but likeways adds to it, which was not proponed before, That by the Receipt, it is evident that Sir *William* got *Clerks* Appryſings out of the Earl of *Morton*'s Charter-Chiſt, and that he Reſtricts the ſame to the Lands of *Kinroſs*, and farder obliges him expreſly, not to extend it to the Lands of *Aberdour*, which Alledgance neither was, nor can be Repelled, ſince the Inſtruction thereof is now inſtantly produced.

2*do* The Purſuer Replys nothing to what *Caribber* objected in his Bill againſt *Kenneway*'s Appryſing and Adjudication, nor againſt Sir *William*'s varying of his Title; And therefore ſeing this was not formerly proponed, and that *Caribber*, not only produces prior and preferable Appryſings to *Kenneways*, but hath a moſt relevant Alledgance inſtantly verifyed to exclude the ſame. There is no reaſon, why a general Certification ſhould be thereon admitted: And as to Sir *William*'s varying and changing his Title, it is manifeſt by his Production in proceſs.

But

But 3*tio* The Lords are earneſtly deſired to conſider the Ground and End, of allowing Certifications, in Actions of Reduction and Improbation: And certainly the Ground is, that the purſuer hath a ſtanding Right and Title in his perſon; For where there is no Right and Title produced, there to crave Certification were abſurd: And therefore it hath been conſtantly obſerved in our practick, That where either the Defender produced a better Right, whereupon he was inſtantly content to debate, or that he proponed a defence, clearly excluſive of the Purſuers Title, and inſtantly verified the ſame, no farder production could be demanded; For in theſe caſes, if either farther Production were demanded, or Certification generally admitted, It were the ſame thing, as to ordain Production, and allow Certification, in favours of a perſon that had no Title at all; It being manifeſt, that whether the Purſuer have no Title, or whether the Defender inſtantly exclude his Title, they are in Law *pares termini*. But 2*do*, As to the End of Certification, It is well known, that Certification is with us, an extraordinary remedy, not known in the Law or practiques of any other Nation, as likeways, that it is of the higheſt import, taking away what ever falls under it for ever, without Relief, And therefore it ought not to be extended farder then its true end, *viz.* To aſcertain the Production and bring it to ſuch a ſtate, as that the Reaſons of Reduction may be debated and concluded with a certain Iſſue, either to prefer the Purſuer, or Aſſoilzie the Defender; But *ita eſt*, that *Caribber* hath made ſuch a Production, and farder inſtantly excludes the Purſuers Title, that it can go no farder, and therefore the production ought to be held ſatisfied, without admitting a general and moſt dangerous Certification, and the parties ordained to proceed, to Debate the Reaſons of Reduction.

To all which the Purſuer Replyed nothing worth the reſuming, And farder *eſto* he had made a better Reply, and that all alledged by *Caribber* in his Bill, had been formerly proponed and Repelled in the Outer houſe, Was it ever heard, that *Proponed and Repelled* in the Outer-houſe was judged ſufficient to exclude a Man from ſeeking Redreſs by a Bill to the Lords *in preſentia* as *Caribber* hath done, where nothing was Extracted and therefore he ſtill inſiſts, that on the Grounds proponed in his Petition, the Lords may either refuſe to admit the general Certification craved, or give him a ſhort Hearing in their own preſence.

In Reſpect whereof, &c.

Jamot Deay
&
Sr William Brun
of Lincroft

1656

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